

SMITH & LOWNEY, P.L.L.C.

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June 24, 2015

RECEIVED ON:

Via Certified Mail - Return Receipt Requested

Managing Agent
HCS Corporation d/b/a/ Hot Cell Services Corp.
P.O. Box 5729
Kent, WA 98064-5729

JUL - 8 2015
ORD
EPA Region 10
Office of the Regional Administrator

Re: SUPPLEMENTAL NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT

Dear Managing Agent:

We represent Waste Action Project, P.O. Box 4832, Seattle, WA 98194, (253) 639-7245. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days' notice of Waste Action Project's intent to file a citizen suit against HCS Corporation d/b/a/ Hot Cell Services Corp. ("Hot Cell") under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below, or amend its complaint in the pending litigation to include allegations based on these violations.

I. Unpermitted Discharges

The CWA, 33 U.S.C. §§ 1311 and 1342, prohibits the discharge of pollutants, including stormwater associated with industrial activity, including the radiation shielding product manufacturing and shipping activities Hot Cell conducts at its facility (SIC Codes 3211, 3231, 3499), to waters of the United States, except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit. Hot Cell has violated and continues to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants from its facility located at or about located at or about 22626 85th Place S., Kent, WA 98031 (the "facility") (the "facility" or "site") to waters of the United States without a NPDES permit. The facility subject to this notice includes any contiguous or adjacent properties owned or operated by Hot Cell.

Hot Cell discharges industrial stormwater and pollutants to Mill (Springbrook) Creek via the municipal storm sewer, and to Garrison Creek which flows along the eastern border of the facility, via municipal and/or private storm sewer conveyances. These pollutants include elevated levels of copper, zinc, lead, and turbidity. These violations of the CWA occur on each day during which there a stormwater discharge from the facility, including days on which there is at least 0.1 inch of precipitation, since Hot Cell terminated its NPDES Permit No. WAR002876 on December 8, 2014. Precipitation data from SeaTac International Airport

identifying such days is appended to this notice of intent to sue. The violations alleged in this notice of intent to sue will continue until Hot Cell obtains and comes into compliance with a NPDES permit authorizing such discharges.

Hot Cell does not qualify for the conditional exclusion for "no exposure" of industrial activities and materials to stormwater, 40 C.F.R. § 122.26(g), because industrial materials, including equipment, raw materials, finished products, and waste materials, and industrial activities, including loading and unloading of industrial materials, are exposed to precipitation at the site, and Hot Cell has not satisfied the conditions at 40 C.F.R. § 122.26(g)(1)-(4). Among the impermissible materials and activities that are exposed to stormwater at the facility are leaded glass polishing grit, residuals of past outdoor material storage, a compressor, leaky equipment, a dumpster, an open dumpster, and forklift and truck traffic associated with loading and unloading of materials.

II. Conclusion

The above-described violations reflect those indicated by the information currently available to Waste Action Project and are in addition to the violations identified in Waste Action Project's March 28, 2014 notice letter to Hot Cell. These violations are ongoing. Waste Action Project intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice of intent to sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$37,500 per day. In addition to civil penalties, Waste Action Project will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Waste Action Project believes that this notice of intent to sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Hot Cell under Section 505(a) of the Clean Water Act for violations, or amend its complaint in the pending litigation to include allegations based on these violations.

Sincerely,

SMITH & LOWNEY, PLLC

By: 
Claire E. Tonry

cc: Gina McCarthy, Administrator, U.S. EPA
Dennis McLerran, Region 10 Administrator, U.S. EPA
Maia Bellon, Director, Washington Department of Ecology

CT Corporation System, Registered Agent, (505 Union Ave. SE, Ste. 120, Olympia, WA 98501)

Lauren P. Alterman, Saint-Gobain Corp., (750 E. Swedesford Road, Valley Forge, PA 19482)

J. Dino Vasquez, Karr Tuttle Campbell, (701 Fifth Ave., Ste. 3300, Seattle WA 98104)

Date Precipitation (inches)

Date Precipitation (inches)

Date Precipitation (inches)

| 2014 | Precip. (in) | Events |
|------|--------------|------------|
| Dec | sum | |
| 8 | 0.36 | Rain |
| 9 | 0.39 | Rain |
| 10 | 0.51 | Rain |
| 11 | 0.27 | Rain |
| 12 | T | |
| 13 | T | Fog , Rain |
| 14 | 0 | Fog |
| 15 | 0 | |
| 16 | T | Rain |
| 17 | 0.11 | Rain |
| 18 | 0.51 | Rain |
| 19 | 0.12 | Rain |
| 20 | 0.77 | Rain |
| 21 | 0 | |
| 22 | 0 | |
| 23 | 0.81 | Rain |
| 24 | 0.21 | Rain |
| 25 | 0 | Fog |
| 26 | 0 | Fog |
| 27 | 0.13 | Rain |
| 28 | 0.16 | Rain |
| 29 | 0 | |
| 30 | 0 | |
| 31 | 0 | |

| 2015 | Precip. (in) | Events |
|------|--------------|------------|
| Jan | sum | |
| 1 | 0 | |
| 2 | 0.06 | Fog , Rain |
| 3 | T | Fog , Rain |
| 4 | 0.4 | Rain |
| 5 | 0.32 | Rain |
| 6 | 0 | Fog |
| 7 | 0 | Fog |
| 8 | 0 | Fog |
| 9 | 0.01 | Fog , Rain |

| | | |
|----|------|------------|
| 10 | 0.23 | Fog , Rain |
| 11 | 0.06 | Fog , Rain |
| 12 | T | Fog |
| 13 | 0 | Fog |
| 14 | 0 | Fog |
| 15 | 0.38 | Rain |
| 16 | T | |
| 17 | 1.03 | Rain |
| 18 | 0.84 | Rain |
| 19 | 0.02 | Rain |
| 20 | 0 | Fog |
| 21 | 0 | Fog |
| 22 | 0.03 | Rain |
| 23 | 0.23 | Rain |
| 24 | 0.02 | Rain |
| 25 | 0 | Fog |
| 26 | 0 | Fog |
| 27 | 0.03 | Rain |
| 28 | T | |
| 29 | 0 | |
| 30 | 0 | Fog |
| 31 | 0 | Fog |

2015 Precip. (in) Events
Feb sum

| | | |
|----|------|------------|
| 1 | 0.06 | Fog , Rain |
| 2 | 0.29 | Rain |
| 3 | 0.05 | Rain |
| 4 | 0.33 | Fog , Rain |
| 5 | 1.03 | Rain |
| 6 | 0.68 | Rain |
| 7 | 0.93 | Rain |
| 8 | 0.14 | Rain |
| 9 | 0.24 | Rain |
| 10 | 0.01 | |
| 11 | T | Fog , Rain |
| 12 | 0.04 | Rain |
| 13 | 0 | Fog |

| | | |
|----|------|------------|
| 14 | 0.01 | Rain |
| 15 | 0 | |
| 16 | 0 | Fog |
| 17 | 0 | |
| 18 | 0 | |
| 19 | 0.18 | Rain |
| 20 | 0.03 | Fog , Rain |
| 21 | 0 | |
| 22 | 0 | |
| 23 | 0 | |
| 24 | 0 | |
| 25 | 0.16 | Rain |
| 26 | 0.37 | Rain |
| 27 | 0.72 | Rain |
| 28 | 0 | |

| 2015 | Precip. (in) | Events |
|------|--------------|--------|
| Mar | sum | |
| 1 | 0 | |
| 2 | 0 | Rain |
| 3 | 0 | |
| 4 | 0 | |
| 5 | 0 | |
| 6 | 0 | |
| 7 | 0 | |
| 8 | 0 | |
| 9 | 0 | |

| | | |
|----|------|------------|
| 10 | 0.03 | Fog , Rain |
| 11 | 0.1 | Rain |
| 12 | 0 | |
| 13 | 0.08 | Rain |
| 14 | 0.67 | Rain |
| 15 | 2.2 | Rain |
| 16 | 0.04 | Rain |
| 17 | 0.03 | Rain |
| 18 | 0 | |
| 19 | T | Rain |
| 20 | 0.16 | Rain |
| 21 | 0.15 | Rain |
| 22 | 0.04 | Rain |

Date Precipitation (inches)

| | | |
|------|--------------|------------|
| 23 | 0.32 | Fog , Rain |
| 24 | 0.3 | Rain |
| 25 | 0.2 | Rain |
| 26 | 0 | |
| 27 | 0.04 | Fog , Rain |
| 28 | 0 | |
| 29 | 0 | |
| 30 | 0.07 | Rain |
| 31 | 0.04 | Rain |
| 2015 | Precip. (in) | Events |
| Apr | sum | |

| | | |
|----|------|---------------------|
| 1 | 0.2 | Rain , Thunderstorm |
| 2 | 0 | |
| 3 | 0.06 | Rain |
| 4 | 0 | |
| 5 | 0 | |
| 6 | 0.04 | Rain |
| 7 | 0.02 | Rain |
| 8 | 0 | |
| 9 | 0 | |
| 10 | 0.43 | Rain |
| 11 | T | Rain |
| 12 | 0 | |
| 13 | 0.55 | Rain |
| 14 | 0.13 | Rain |
| 15 | 0 | |
| 16 | 0 | |
| 17 | 0 | |
| 18 | 0 | |
| 19 | 0 | |
| 20 | 0 | |
| 21 | 0.22 | Rain |
| 22 | 0 | Rain |
| 23 | 0.12 | Rain |
| 24 | 0.13 | Rain |
| 25 | 0.05 | Rain |
| 26 | T | |
| 27 | 0.01 | Rain |

Date Precipitation (inches)

| | | |
|------|--------------|--------|
| 28 | 0.07 | Rain |
| 29 | 0 | |
| 30 | 0 | |
| 2015 | Precip. (in) | Events |
| May | sum | |
| 1 | 0 | |
| 2 | 0 | |
| 3 | 0 | |
| 4 | 0 | |
| 5 | 0.24 | Rain |
| 6 | 0 | |
| 7 | 0 | |
| 8 | 0 | |
| 9 | 0 | |
| 10 | T | |
| 11 | T | |
| 12 | 0.17 | Rain |
| 13 | 0.16 | Rain |
| 14 | 0.01 | Rain |
| 15 | 0 | |
| 16 | 0 | |
| 17 | 0 | |
| 18 | 0 | |
| 19 | 0 | |
| 20 | 0 | Fog |
| 21 | 0 | |
| 22 | 0 | |
| 23 | T | Rain |
| 24 | 0 | |
| 25 | 0 | |
| 26 | 0 | |
| 27 | 0 | |
| 28 | 0 | |
| 29 | 0 | |
| 30 | 0 | |
| 31 | 0 | |
| 2015 | Precip. (in) | Events |
| Jun | sum | |
| 1 | 0.18 | Rain |
| 2 | 0.02 | Rain |
| 3 | 0 | |
| 4 | 0 | |

Date Precipitation (inches)

| | | |
|----|------|------|
| 5 | 0 | |
| 6 | 0 | |
| 7 | 0 | |
| 8 | 0 | |
| 9 | 0 | |
| 10 | 0 | |
| 11 | 0 | |
| 12 | 0 | |
| 13 | 0 | |
| 14 | 0 | |
| 15 | 0 | |
| 16 | 0 | |
| 17 | 0 | |
| 18 | T | |
| 19 | 0.02 | Rain |
| 20 | 0 | |
| 21 | 0 | |
| 22 | 0 | |
| 23 | 0 | |